

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**JOHN M. CARTER, AND KRISTINA M.
CARTER,**

Plaintiffs,

vs.

**SELECT PORTFOLIO SERVICING, INC.,
DEUTSCHE BANK NATIONAL TRUST
COMPANY, Trust 2004-HE4, Mortgage
Pass Through Certificates Series 2004-
HE4, as Trustee for; J.P. MORGAN
CHASE BANK, N.A., DOES 1-10,
INCLUSIVE, AND MORGAN STANLEY
ABS CAPITAL I INC.,**

Defendants.

8:16CV52

**MEMORANDUM
AND ORDER**

This Matter is before the Court on Magistrate Judge Gossett's Findings and Recommendation (Filing No. 18) ("Findings and Recommendation"), Plaintiffs' Motion to Remand (Filing No. 14), and Defendants' Joint Motion for More Definite Statement (Filing No. 15) (collectively "Motions"). For the reasons discussed below, the Findings and Recommendation will be adopted in part and not adopted in part, and the Motions will be denied as moot without prejudice to reassertion.

BACKGROUND

Plaintiffs filed this action in the District Court of Douglas County, Nebraska, on December 21, 2015, alleging various fraudulent and predatory real estate lending practices on the part of Defendants, including violations of the Fair Debt Collections Practices Act, 15 U.S.C. §§ 1692–1692p ("FDCPA") and the Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601–2617 ("RESPA"). (See Filing No. 1-1.) Defendants removed the action to this Court on January 27, 2016, asserting this Court's

jurisdiction, pursuant to both a federal question appearing on the face of Plaintiffs' Complaint and the Parties' complete diversity of citizenship. (See Filing No. 1.) Plaintiffs filed their Motion to Remand on February 27, 2016. (See Filing No. 14.) Defendants filed their Joint Motion for More Definite Statement on March 4, 2016, alleging that Plaintiffs' Complaint failed to identify all defendants, failed to specify which allegations pertained to which defendants, and, as to the Complaint's allegations of fraud, failed to meet the heightened pleading standards required by Federal Rule of Civil Procedure 9(b). (See Filing No. 15 at 1); see *also* Fed. R. Civ. P. 9(b) ("In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.").

As to the Motion to Remand, Judge Gossett determined that, while the Notice of Removal did not identify the citizenship of the Parties so as to establish diversity jurisdiction, it did demonstrate the presence of a federal question because the Complaint alleged violations of federal statutes. (Filing No. 18 at 3–4.) Thus, Judge Gossett recommended that the Motion to Remand be denied. (*Id.*)

Regarding Defendants' Joint Motion for More Definite Statement, Judge Gossett found that all the allegations in the Complaint were pled with sufficient specificity with the exception of those claims alleging fraud, that are subject to Rule 9(b)'s heightened pleading standard. (Filing No. 18 at 4–6.) Consequently, Judge Gossett recommended that the Joint Motion be granted in part and denied in part.

The Findings and Recommendation initially recommended that the Court allow Plaintiffs to file an amended complaint by April 22, 2016, but, on Judge Gossett's own motion, the Findings and Recommendation were amended to recommend that the Court

allow Plaintiffs to file an amended complaint within fourteen days of the adoption of the Findings and Recommendation. (See Filing Nos. 18 at 6; 19.) On April 22, 2016, before the expiration of the period in which the parties could object to the Findings and Recommendation, Plaintiffs filed an amended complaint (Filing No. 20) (“Amended Complaint”). As one cause of action, the Amended Complaint alleges a RESPA violation. (Filing No. 20 at ECF 24–26.)

STANDARD OF REVIEW

Under 28 U.S.C. § 636(b)(1), the Court may accept, reject, or modify, in whole or in part, the Magistrate Judge's findings or recommendation. The Court may also receive further evidence or remand the matter to the Magistrate Judge with instructions. *Id.*; Fed. R. Civ. P. 72(b).

DISCUSSION

The Court has conducted a de novo review and concludes that that the filing of the Amended Complaint moots both Motions and those related issues addressed in the Findings and Recommendation. The Amended Complaint expressly seeks relief under RESPA. Thus, this Court has subject matter jurisdiction, and the Court will not require Defendants to file an amended notice of removal. Further, Plaintiffs have voluntarily complied with Judge Gossett’s recommendation that they file an amended complaint. Because any remaining issues are moot, the Court need not await the expiration of the period in which the parties may object to the Findings and Recommendation. Accordingly,

IT IS ORDERED:

1. The Findings and Recommendation (Filing No. 18) are adopted in part and not adopted in part as follows:
 - a. The Findings and Recommendation are adopted as to the recommendation that the Motion to Remand be denied; and
 - b. Otherwise not adopted;
2. The Plaintiffs' Motion to Remand (Filing No. 14) is denied as moot without prejudice to reassertion; and
3. The Defendants' Joint Motion for More Definite Statement (Filing No. 15) is denied as moot without prejudice to reassertion.

Dated this 26th day of April, 2016

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge